IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3834 OF 1989

1. Smt. Subhadrabai w/o Rajaram Bhintade
since deceased by his heirs:
5A) Umesh Laxman Bhintade,
5B) Ormila Laxman Bhintade,

2. Smt.Ranjana Ramchandra Bhintade,
3. Kum Pushpa Ramchandra Bhintade,
4. Kum.Kavita Ramchandra Bhintade,

5. Laxman Rajaram Bhintade,
since deceased by his L.Rs.
5-A) Umesh Laxman Bhintade,
5-B) Urmila Laxman Bhintade,
Both resident of Bavdhan, Taluka Wai
District-Satara,

6.Arvind Rajaram Bhintade,
since deceased through L.Rs
6-A) Santosh Arvind Bhintade,
6-B) Kanchan Arvind Bhitnade,
Both resident of Bavdhan, Taluka Wai
Dist-Satara
7.Sharad Rajaram Bhintade,
8.Shatrughna Rajaram Bhintade,
9. Sunil Rajaram Bhintade,
All r/o Bavdhan, Tal.Wai,
Dist :Satara. .. Petitioners.
(Orig.Defendants)

Vs

1.Vyankat Dhondi Bhintade,
since deceased through his L.Rs
1-A) Smt.Anusaya Mansingh Dhumal,
1-B) shri Suresh Vyankat Bhintade,
1-C) Smt Sonabai Vyankat Mandhare,
All r/o Dhavdi, Taluka Wai,
Dist: Satara.

2. The Member,
Maharashtra Revenue Tribunal,
Pune. .. Respondents
(No.1-Orig.Plff.)

Mr S.G.Page, for the petitioners.
Mr S.B.Kadam, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 14th September, 2004.
ORAL JUDGMENT:

1. This petition is directed against the judgment and order dated 24.1.1984 rendered by the Maharashtra Revenue Tribunal in the Revision filed by the respondent-landlord, by which the concurrent findings recorded by the authorities below have been upset holding that the petitioners are not the tenants in the suit land admeasuring 10 gunthas on the southern side from Survey No.1168/1 plus 2A situate at village Bavdhan, Taluka Wai, District-Satara. The proceedings before the tenancy authorities arise from a reference made by the Civil Court under section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act"). The deceased respondent no.1, i.e. Vyankat Dhondi Bhintade (for short "Vyankat Bhintade") instituted a Civil Suit No.100 of 1972 in the Court of the learned Civil Judge, Jr.Dn., Wai, seeking possession of the suit land from the petitioners-defendants. In the said suit, the petitioners claimed tenancy and in view thereof, an issue of tenancy was framed and it was referred to the tenancy authorities under section 85A of the Act. The Tahasildar, Wai and thereafter the Assistant Collector, Wai answered the issue in favour of the petitioners. The Maharashtra Revenue Tribunal in

the Revision filed by Vyankat Bhintade, reversed the concurrent findings recorded by the authorities below. Hence, the petitioners are before this court.

2. Some undisputed facts are as follows: Survey No.1168 admeasures 1 Acre 17 gunthas. It was divided into two sub-divisions, viz. Survey No 1168/1 admeasuring 17 gunthas owned by Vyankat Bhintade and Survey No.1168/2 admeasuring 1 acre owned by Murari Laxman Bhintade. Survey no.1168/1 is the ancestral property of deceased Vyankat. In addition to the said land, Vyankat purchased 13 gunthas land from one Totaba by sale deed dated 20/6/1936 and 10 gunthas from Smt.Pilubai Bhintade by sale deed dated 13.1.1941. The land purchased from Pilubai is the land in dispute in the instant petition.

2.1 The case set up by the petitioners is that when the land in dispute was purchased by Vyankant Bhintade from Pilubai, his grand father Murari Ganu was in possession of the said land as tenant. They claimed tenancy over the land in dispute and 17 gunthas out of survey no.1168/1, owned by Vyankat. The total land in possession of the petitioners as tenant as claimed by them was 27 gunthas. There is no dispute that the petitioners were tenant in 17 gunthas owned by Vyankat

Bhintade in S.No.1168/1.

3. Against a backdrop of these facts, the claim of the petitioners was considered by the Tahasildar in Tenancy Case No.3 of 1974. After considering the statements of the various witnesses and the revenue record produced by the parties coupled with the application filed by Vyankat Bhintade under section 88-C of the Act, dated 30.6.1958, held that the petitioners are tenant in the suit property. Being aggrieved by the said judgment and order dated 31.3.1976, the deceased respondent no.1-landlord filed Tenancy Appeal No.9 of 1976 before the Assistant Collector. The appeal was dismissed and the order of the lower authority was confirmed by the Assistant Collector vide order dated 30.6.1980. The matter was further carried by Vyankat Bhintade in revision before the Maharashtra Revenue Tribunal (for short, "Tribunal"). The Tribunal reversed the concurrent findings recorded by the authorities below holding that the petitioners-defendants were not the tenants in the suit land.

4. Mr Page, learned counsel for the petitioners, at the outset, submitted that the Tribunal acted in complete disregard of its power and proceeded as though it were

either dealing with the matter as a Court of first instance or as an appellate Court. The Tribunal was not entitled to evaluate the evidence and come to its own conclusion while exercising its powers under section 76 of the Act. He placed reliance upon the judgment of the Apex Court in **Maruti Bala Raut V. Dashrath Babu Wathare and ors, AIR 1974 SC 2051**. He further invited my attention to the findings recorded by the Tribunal and contended that the Tribunal committed a grave error in relying upon the findings of the Tribunal in the earlier round of litigations which were initiated in the reference made by the Civil Court in Small Causes Suit No.39 of 1960 to hold that the petitioners were not tenants in respect of the land in dispute. He also invited my attention to the observations made by the Tribunal in paragraphs 5, 6 and 7 of the said judgment and contended that the Tribunal committed a grave error in relying upon the material in those paragraphs for reversing the judgment of the authorities below.

5. On the other hand, Mr Kadam, learned counsel for the respondent no.1 contended that the lower authorities wrongly placed the reliance upon the entries in the revenue records to record its findings in favour of the petitioners holding them as tenants in the suit land.

In his submission, entries in the revenue records cannot establish lawful possession of the tenant. In support of his submission, he placed reliance upon the judgment of the Apex Court in **Hanmanta Daulappa Nimbal Vs. Babasaheb Dajisaheb Londhe, AIR 1996 Supreme Court 223.** He also invited my attention to the Judgment of the Tribunal and contended that the Tribunal has rightly interfered with the findings recorded by the Courts below.

6. The Tribunal seems to have reversed the concurrent findings recorded by the authorities below mainly relying upon the three documents. Firstly, the sale deed by which the original deceased plaintiff- Vyankat Bhintade had purchased the suit land from Pilubai, secondly, the judgment of the Civil Court in Small Causes Suit No.104 of 1967 filed by the deceased respondent no.1-landlord for recovery of the rent and, thirdly, the findings recorded by the Tribunal in the earlier round of litigations arising out of the reference made by the Civil Court in Small Causes Suit No.39/60. In so far as the sale deed is concerned, it is apparent that the petitioners-tenants were not parties to the sale deed and therefore, the contents of the sale deed would not bind them. The claim of tenancy

cannot be rejected merely because there is no reference in the sale deed between Pilubai and Vyankat Bhintade to the tenants in the suit land if otherwise there is cogent evidence on record in support of such claim. In so far as Small Causes Suit No.104 of 1967 filed in the Court of the learned Civil Judge, Wai, by Vyankat Bhintade for recovery of the rent is concerned, though the decree shows that the petitioners, who were the defendants in that suit, were shown as tenants only in 17 gunthas from the land Survey No.1168/1 plus 2A, i.e the suit land, it cannot be overlooked that prior to this suit the landlord had filed the application under section 88-C of the Act on 30.6.1958 in which the landlord had clearly admitted the tenancy of the petitioners in the suit land. In my opinion, even if the decree in Small Causes Suit No.104/1967, does not speak about 27 gunthas and it speaks only about 17 gunthas, it would not be sufficient to hold that the petitioners were not the tenant in the suit land. In so far as the judgment of the tribunal dated 5.2.1963 passed in the proceedings arising out of the reference made in Small Causes Suit No.39 of 1960 is concerned, it is clear from the judgment of the Tribunal that the issue was not as to whether the petitioners were the tenants in the suit land but the issue was only as to

whether the petitioners were tenants of the three mango trees. The Tribunal was not considering the tenancy rights of the petitioners in respect of the land in dispute. In my opinion, the basic document, which cannot be overlooked to establish the right of the tenancy, is the application filed by Vyankat Bhintade dated 30.6.1958 under section 88-C of the Act. That application was filed in respect of 27 gunthas out of Survey No. 1168 showing Rajaram Murari as tenant. This clearly demonstrates that the tenancy of the petitioners in 27 gunthas consisting of the suit land was an admitted fact.

7. Thus, it is clear that the Tribunal wrongly placed reliance upon the aforestated documents and acted in complete disregard of its power and proceeded as if it were either dealing with the matter as a court of first instance or as an appellate court. The Tahasildar’s order, in my opinion, is well reasoned order which was passed after dealing with not only the revenue records, statements of the witnesses but even the other material was taken into consideration such as the application filed by the deceased respondent no.1-landlord under section 88-C of the Act.

8. Considering the overall facts and circumstances of the case, I am of the view that while dealing with the orders passed by the authorities below the Tribunal has overstepped the limits of its powers apart from the fact that it committed a grave error in relying upon three documents as mentioned earlier. In the result, the writ petition is allowed. The impugned judgment of the Maharashtra Revenue Tribunal is quashed and set aside. The judgment of the Tahasildar, Wai, stands confirmed.

9. Rule is made absolute. No costs.

(D.B.BHOSALE, J.)

HIGH COURT
CIVIL APPELLATE SIDE
WRIT PETITION NO.3834 OF 1989

Date of Judgment:

14th Sept., 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?

FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.3834 OF 1989
Smt Subhadrabai .. & Ors Vs. 1.Vyankat D Bhintade & ors.

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr S.G.Page, for the petitioners.

Mr S.B.Kadam, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 14th September, 2004.

For the reasons recorded in the accompanying judgment, the Court passes the following operative order :

"In the result, the writ petition is allowed. The impugned judgment of the Maharashtra Revenue Tribunal is quashed and set aside. The judgment of the Tahasildar, Wai, stands confirmed.

Rule is made absolute. No costs."

Dt:30.9.04

For Addl.Registrar,